IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 14143 of 2005

Between:

Somayappa Swamy, S/o.Late Basavalingappa,
Mahant, 5-5-161/1 to 162/6, 187, 188 Shanker Mutt, Ranigunj, Secunderabad.

..... PETITIONER

AND

1 The Commissioner, M.C.H.Tank Bund, Hyderabad.
2 The City Planner, Municipal Corporation, Hyderabad, Secunderabad

Division, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ, direction or order more particularly in the nature of writ of Mandamus declaring the action of respondent in issuing the impugned order dt.29-6-2005 in file NO.0503/CSC/ TP/72003 during the subsistence of order in I.A.NO.1847/04 in OS 1804/04 on the file of the learned 1st Jr.Civil Judge, Sec'bad and as being illegal, arbitrary and violative of Art. 14 & 21 of the Const. of India and as also provisions of HMC Act and pass such other order or orders as may be deemed fit and proper in the circumstances of the case and interest of justice.

Counsel for the Petitioner:MR.VIJAY ASHRIT

Counsel for the Respondents: SMT.G.JYOTHI KIRAN

The Court made the following:

O R D E R:

This writ petition is filed under Article 226 of the Constitution of India seeking a Mandamus declaring the action of the respondents in issuing the impugned notice during the subsistence of order in I.A. 1807/04 in O.S.No.1804/2004 on the file of the learned 1st Junior Civil Judge, Secunderabad as illegal and arbitrary.

The petitioner herein is a Mahant, looking after the welfare of the Shanker Mutt situated at Ranigunj, Secunderabad. It is stated in the affidavit filed in support of the writ petition that since the said Shanker Mutt is in a dilapidated condition, after obtaining necessary permission from the 1st respondent-Commissioner, Municipal Corporation of Hyderabad and approval of Commissioner Endowment Department, the petitioner started construction in accordance with the sanctioned plan. But at the instance of the political parties, the 2nd respondent-City Planner, Municipal Corporation of Hyderabad sought to demolish the constructions. In view of the same, the petitioner filed W.P.No.18343 of 2004 before this Court wherein the writ petition was disposed of on 07-10-2004 directing the respondent therein to proceed in accordance with law. Accordingly, the respondent therein who is the 2nd respondent herein issued a notice in accordance with law for which explanation was also submitted. However, the 2nd respondent herein, not satisfying with the explanation, issued final notice calling upon the petitioner to demolish the structures, which were in deviation of the provisions of law. Aggrieved by the action of the 2nd respondent, the petitioner preferred an appeal before the Municipal Counsel but till now no steps had been taken by the concerned in this regard. Taking advantage of the same, the 2nd respondent again tried to demolish the structure. Therefore, the petitioner filed a civil suit in O.S.No.1807 of 2004 before the learned 1st Junior Civil Judge, City Civil Court, Secunderabad, wherein the learned Judge granted ad-interim injunction in I.A.No.1847 of 2004 on 21-12-2004 directing the 2nd respondent herein not to interfere with the possession

of the petitioner pending disposal of stay petition in appeal or till 30-12-2004 whichever is earlier. Subsequently, the said order was made absolute. It is the case of the petitioner that the respondents instead of challenging the interim order, issued the impugned notice, wherein the petitioner was directed to remove the deviations at the above premises within 24 hours failing which the same will be removed departmentally as per the Provisions of the HMC Act, 1955. Aggrieved by the same, the present writ petition has been filed.

Heard both sides.

I have perused the entire material available on record.

The case of the 2nd respondent-Town Planner, Hyderabad is that the petitioner made certain structures in deviation of the sanctioned plan. Challenging the above action of the 2nd respondent, the petitioner filed W.P.No. 18343 of 2004 wherein this Court directed the 2nd respondent to proceed in accordance with law. Accordingly, the 2nd respondent issued a notice and thereafter a final notice calling upon the petitioner to demolish the structures alleged to be in deviation. In view of the same, the petitioner approached the competent Civil Court and obtained ad-interim injunction which was subsequently, made absolute. Admittedly, no order has been passed in the appeal preferred before the Municipal Council. Therefore, without hesitation, it can be said that the respondents-corporation having not abide with the orders of the competent Civil Court issued the impugned Notice calling upon the petitioner to demolish the structures. Pending ad-interim orders in favour of the petitioner, it is not just and proper on the part of the respondents-corporation to proceed further in this regard.

The grievance raised by the petitioner herein that without obeying the orders of the Civil Court, at the instance of the political parties, the respondents-corporation issued the impugned notice contrary to law. Hence the same is liable to be set aside and is accordingly set aside.

Accordingly, at the stage of admission, the writ petition is allowed. No costs.

_____

06-07-2005

MjI/*

To,

1 The Commissioner, M.C.H. Tank Bund, Hyderabad.
2 The City Planner, Municipal Corporation, Hyderabad, Secunderabad

Division, Secunderabad.

3. 2 CD copies.